

Applicant(s): Chi Vu et al.
U.S.S.N.: 10/552,302

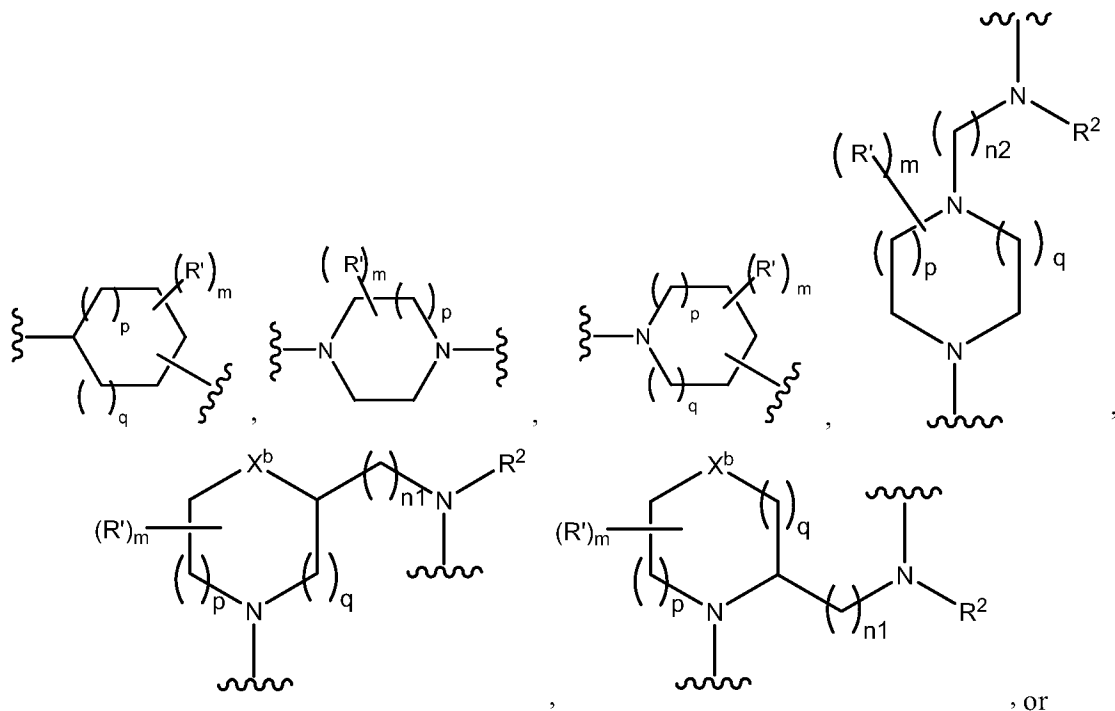
REMARKS

This is in reply to the non-final office action mailed December 31, 2008. Applicants have amended claims 1, 3, 9 and 29 to more clearly and distinctly point out the subject matter of the claimed invention. The Examiner has withdrawn claims 2-45. Thus, claims 1-45 are currently pending. No new matter has been added by these amendments. Please consider the following remarks.

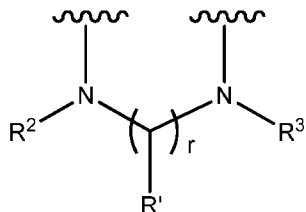
Rejection Under 35 U.S.C. §102

Claim 1 is rejected under 35 U.S.C. §102(e) as being anticipated by Matasi et al. (U.S. 7,041,666) ("Matasi"). Specifically, the Examiner alleges that compound 77 in column 45 of Matasi falls within pending claim 1. Applicants traverse.

However, solely to advance prosecution and without acquiescing to the Examiner's position, Applicants have amended claim 1. Claim 1 now recites a compound of formula (I), wherein L is a linker defined as one of the following structures:



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Support for this amendment can be found throughout the specification as originally filed, for example, in original claims 10 and 21-22, in example 27 on p. 32 and on p. 3, lines 12-14 of the specification as originally filed. Compound 77, referred to by Matasi, falls outside the scope of amended claim 1. Accordingly, Applicants respectfully request reconsideration and withdrawal of the above anticipation rejection.

Election/Restrictions

The Examiner has withdrawn claims 2-42 pursuant to MPEP 803.2 because art was allegedly found pertaining to the compound elected by Applicants in response to the April 7, 2008 Restriction Requirement and a §102 (e) rejection was issued. As discussed above, the art cited by the Examiner falls outside the scope of amended claim 1 and Applicants submit that amended claim 1 is novel. MPEP 803.2 requires that the amended Markush-type claim is to be reexamined “[s]hould applicant, in response to this rejection of the Markush-type claim, overcome the rejection, as by amending the Markush-type claim to exclude the species anticipated or rendered obvious by the prior art...” Thus, Applicants respectfully request that the Examiner reconsider the withdrawal of claims 2-45 and reexamine amended claim 1.

Rejection Under 35 U.S.C. §112, 2nd Paragraph

Claims 1-22 and 26-39 are rejected under 35 U.S.C. §112, second paragraph as being indefinite.

First, the Examiner argues that the recitation of “heteroaryl” is indefinite because it is not known how many atoms are present, what kind of heteroatoms are involved, what size ring is intended and how many rings are present. In response, Applicants

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submit that this term is defined in the original specification. *See e.g.*, Original Specification, p. 13, line 15 to p. 14, line 2. This definition not only provides the number of atoms considered, but also includes an explanation of the kind of heteroatoms, numbers of rings and ring size. Moreover, this definition also provides numerous examples of “heteroaryl” rings that may be used in the pending claims. Finally, the term “heteroaryl” is a common term used in the art to describe such a substituent.

Second, the Examiner alleges that the terms “heterocycloalkyl”, “heterocycloalkenyl”, “heteroaralkyl” and “heterocyclyl” are indefinite because it is not known how many atoms make up the ring, which atoms are present and what kind of a ring is intended. Applicants have defined “heterocycloalkyl”, “heterocycloalkenyl”, and “heteroaralkyl” in the original specification. *See e.g.*, Original Specification, p. 12, line 26 to p. 14, line 2. The definitions mentioned above provide the intended number and type of atoms. Moreover, these definitions also provide a number of examples falling within the scope of these terms. In light of this, one of ordinary skill in the art would clearly recognize and understand that the term “cyclo” refers to any type of ring encompassed by the definitions mentioned above. Finally, Applicants submit that one of ordinary skill in the art would understand that the term “heterocyclyl” refers to any heterocycle or heteroaryl group.

Third, the Examiner argues that the terms “urea” and “thiourea” present in the definitions R' and R'' are compounds, not substituents and thus, it is unclear what Applicants have intended. In response, Applicants respectfully submit that one of ordinary skill in the art would recognize and understand the terms “urea” and “thiourea” and what is intended by the claims reciting these terms. Furthermore, Applicants have defined both “urea” and “thiourea” in the original specification as filed. *See e.g.*, Original Specification, p. 14, lines 24-26. However, solely to advance prosecution and without acquiescing to the Examiner's position, Applicants have removed recitation of these terms from the pending claims.

Fourth, the Examiner argues that when two adjacent R' groups can join to form a 4 to 8 membered optionally substituted cyclic moiety, it is unclear which atoms form the cyclic moiety. Applicants traverse.

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Applicants submit that one of ordinary skill in the art would clearly recognize and understand that the atoms used to form the ring in question are those of the R' moieties along with the atoms to which those moieties are attached. The Examiner further argues that the term "substituted" without providing which substituents are intended is indefinite. However, Applicants point to the definition of the term "cyclic moiety" (*See* Original Specification, p.14, lines 3-5), defined as including a heterocycloalkyl, cycloalkenyl, etc., all of which are also specifically defined in the specification. Each of these terms fully defines the further substituents that may be present when the cyclic ring is "optionally substituted". *See e.g.*, Original Specification, p. 13, lines 3-14.

In light of the above arguments and amendments, Applicants respectfully request withdrawal and reconsideration of the above indefiniteness rejections.

Excluded Compounds/Provisos

In response to the Examiner's request on p. 4 of the Office Action, Applicants submit that any excluded compounds material to the examination of this application are cited in the Information Disclosure Statements filed previously and accompanying this reply.

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Conclusion

Applicants submit the application is in condition for allowance, which action is requested.

Respectfully submitted,

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